

State of South Dakota

EIGHTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2010

400R0341

SENATE BILL NO. **60**

Introduced by: The Committee on Commerce at the request of the Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the siting of energy
2 facilities by the Public Utilities Commission.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-41B-2 be amended to read as follows:

5 49-41B-2. Terms as used in this chapter mean:

- 6 (1) "AC/DC conversion facility," an asynchronous AC to DC to AC tie that is directly
7 connected to a transmission facility or a facility that connects an AC transmission
8 facility with a DC transmission facility or vice versa;
- 9 (2) "Associated facilities," facilities which include, aqueducts, diversion dams,
10 transmission substations of two hundred fifty kilovolts or more, storage ponds,
11 reservoirs, or cooling ponds;
- 12 (3) "Carbon dioxide," a fluid that consists of more than ninety percent carbon dioxide
13 molecules compressed in a supercritical state;
- 14 (4) "Commission," the Public Utilities Commission;
- 15 (5) "Construction," any clearing of land, excavation, or other action that would affect the



1 environment of the site for each land or rights of way upon or over which a facility
2 may be constructed or modified, but not including activities incident to preliminary
3 engineering or environmental studies;

4 (6) "Energy conversion facility," any new facility, or facility expansion, designed for or
5 capable of generation of one hundred megawatts or more of electricity, but does not
6 include any wind energy facilities;

7 (7) "Facility," any energy conversion facility, AC/DC conversion facility, transmission
8 facility, or wind energy facility, and associated facilities;

9 (8) "Permit," the permit issued by the commission under this chapter required for the
10 construction and operation of a facility;

11 (9) "Person," an individual, partnership, limited liability company, joint venture, private
12 or public corporation, association, firm, public service company, cooperative,
13 political subdivision, municipal corporation, government agency, public utility
14 district, or any other public or private entity, however organized;

15 (10) "Siting area," that area within ten miles in any direction of a proposed energy
16 conversion facility, AC/DC conversion facility, or which is determined by the
17 commission to be affected by a proposed energy conversion facility;

18 (11) "Trans-state transmission facility," an electric transmission line and its associated
19 facilities which originates outside the State of South Dakota, crosses this state and
20 terminates outside the State of South Dakota; and which transmission line and
21 associated facilities delivers electric power and energy of twenty-five percent or less
22 of the design capacity of such line and facilities for use in the State of South Dakota;

23 (12) "Utility," any person engaged in and controlling the generation or transmission of
24 electric energy and gas or liquid transmission facilities as defined by § 49-41B-2.1;

(13) "Wind energy facility," a new facility, or facility expansion, consisting of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity and that is designed for or capable of generation of one hundred megawatts or more of electricity. A wind energy facility expansion includes the addition of new wind turbines, designed for or capable of generating twenty-five megawatts or more of electricity, which are to be managed in common and integrated with existing turbines and the combined megawatt capability of the existing and new turbines is one hundred megawatts or more of electricity. The number of megawatts generated by a wind energy facility is determined by adding the nameplate power generation capability of each wind turbine.

Section 2. That § 49-41B-2.1 be amended to read as follows:

49-41B-2.1. For the purposes of this chapter, a transmission facility is:

- (1) An electric transmission line and associated facilities with a design of more than one hundred fifteen kilovolts; or
- (2) A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide, excluding any gas or liquid transmission lines or associated facilities which meet any of the following criteria:
 - (a) Lines or facilities that are used exclusively for distribution or gathering;
 - (b) Steel pipe and associated facilities ~~operated at a hoop stress of less than twenty percent~~ that cannot be operated at a hoop stress of twenty percent or more of specified minimum yield strength as defined by 49 CFR 192.3 as of January 1, 2007, or plastic pipe and associated facilities ~~which operate at less than fifty~~

1 ~~percent of the design pressure that cannot be operated at a design pressure of~~
2 fifty percent or more as determined by the formula specified in 49 CFR
3 192.121 as of January 1, 2007; or

4 (c) Pipe which has nominal diameter of less than four inches and not more than
5 one mile of the entire line is constructed outside of public right-of-way.

6 Nothing in this section precludes a utility from applying to the commission for a permit for
7 the construction of an electric transmission line and associated facilities with a design of one
8 hundred fifteen kilovolts or less. For the purposes of this chapter such electric transmission line
9 and associated facilities is a transmission facility.

10 Section 3. That chapter 49-41B be amended by adding thereto a NEW SECTION to read as
11 follows:

12 For the purposes of this chapter, a facility is considered to be modified if:

13 (1) A gas or liquid transmission line that did not meet the definition of a transmission
14 facility prior to building the line is to be modified in such a way that the line will
15 meet the definition of a transmission facility after the modification is complete. No
16 permit is required for steel pipe and associated facilities, as described in § 49-41B-
17 2.1(2)(b), operating on July 1, 2010, that have been historically calculated at an
18 ongoing constant pressure of less than twenty percent of specified minimum yield
19 strength unless the pipeline operator intends to increase the ongoing constant pressure
20 to twenty percent or more. No permit is required for plastic pipe and associated
21 facilities, as described in § 49-41B-2.1(2)(b), operating on July 1, 2010, that have
22 been historically calculated at an ongoing constant pressure of less than fifty percent
23 of the design pressure unless the pipeline operator intends to increase the ongoing
24 constant pressure to fifty percent or more;

(2) An electric transmission line that does not meet the definition of a transmission facility prior to building the line is to be modified in such a way that the line will meet the definition of a transmission facility after the modification is complete or the normal carrying capacity of an electric transmission facility is to be increased by an additional twenty kilovolts or greater; or

(3) The normal generating capacity of an energy conversion facility is to be increased by an additional twenty-five megawatts or greater.

Section 4. That § 49-41B-5.2 be amended to read as follows:

49-41B-5.2. The applicant shall notify, in writing, the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed. For purposes of this section, the owner of record is limited to the owner designated to receive the property tax bill sent by the county treasurer. The notice shall be mailed by certified mail. The applicant shall also publish a notice of the proposed facility. Notification shall be published in the official newspaper of each county in which the proposed site is located. The notice shall be published at least once each week for at least two consecutive weeks. The notice shall contain a description of the nature and location of the facility. Any notification required by this section shall state the date, time, and location of the public hearing and shall be made no later than ~~thirty~~ twenty days prior to the date of the public hearing.

Section 5. That § 49-41B-7 be amended to read as follows:

49-41B-7. The local review committee shall meet to assess the extent of the potential social and economic effect to be generated by the proposed facility, to assess the affected area's capacity to absorb those effects at various stages of construction, and formulate mitigation measures. The assessment of the local review committee shall include ~~but not be limited to~~ consideration of the temporary and permanent alternatives in the following areas:

- 1 (1) Housing supplies;
- 2 (2) Educational facilities and manpower;
- 3 (3) ~~Waste~~ Water supply and distribution;
- 4 (4) Waste water treatment and collection;
- 5 (5) Solid waste disposal and collection;
- 6 (6) Law enforcement;
- 7 (7) Transportation;
- 8 (8) Fire protection;
- 9 (9) Health;
- 10 (10) Recreation;
- 11 (11) Government; and
- 12 (12) Energy.